



6351-01-P

## **COMMODITY FUTURES TRADING COMMISSION**

### **Agency Information Collection Activities: Notice of Intent to Extend Collection 3038-0049: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed extension of a collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on requirements related to requests for, and the issuance of, exemptive, no-action, and interpretative letters.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by “OMB Control Number 3038-0049,” by any of the following methods:

- The Agency’s web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the web site.
- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail above.

- Federal eRulemaking Portal: <http://www.regulations.gov/>. Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jocelyn Partridge, Special Counsel, Division of Clearing and Risk, (202) 418-5926, e-mail: [jpartridge@cftc.gov](mailto:jpartridge@cftc.gov); Meghan Tente, Special Counsel, Division of Clearing and Risk, (202) 418-5785, email: [mtente@cftc.gov](mailto:mtente@cftc.gov); Jacob Chachkin, Special Counsel, Division of Swaps and Intermediary Oversight, (202) 418-5496, email: [jchachkin@cftc.gov](mailto:jchachkin@cftc.gov); or Dana Brown, Paralegal Specialist, Division of Market Oversight, (202) 418-5093, e-mail: [dbrown@cftc.gov](mailto:dbrown@cftc.gov); or (202) 418-5093.

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires a Federal agency to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with these requirements, the CFTC is publishing notice of the proposed collection of information listed below.

**Title:** Procedural Requirements for Requests for Interpretative, No-Action and Exemptive Letters (OMB Control No. 3038-0049). This is a request for an extension of a currently approved information collection.

**Abstract:** This collection covers the information requirements for voluntary requests for, and the issuance of, interpretative, no-action, and exemptive letters submitted to Commission staff pursuant to the provisions of section 140.99 of the Commission's regulations,<sup>1</sup> and related requests for confidential treatment pursuant to section 140.98(b)<sup>2</sup> of the Commission's regulations. It includes reporting and recordkeeping requirements.

The collection requirements described herein are voluntary. They apply to parties that choose to request a benefit from Commission staff in the form of the regulatory action described in section 140.99. Such benefits may include, for example, relief from some or all of the burdens associated with other collections of information, relief from regulatory obligations that do not constitute collections of information collections, interpretations, or extensions of time for compliance with certain Commission regulations. It is likely that persons who would opt to request action under section 140.99 will have determined that the information collection burdens that they would assume by doing so will be outweighed substantially by the relief that they seek to receive.

The information collection associated with section 140.99 of the Commission's regulations is necessary, and would be used, to assist Commission staff in understanding the type of relief that is being requested and the basis for the request. It is also necessary, and would be used, to provide staff with a sufficient basis for determining whether: (1) granting the relief

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<sup>1</sup> 17 CFR. 140.99. An archive containing CFTC staff letters may be found at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

<sup>2</sup> 17 CFR 140.98(b).

would be necessary or appropriate under the facts and circumstances presented by the requestor; (2) the relief provided should be conditional and/or time-limited; and (3) granting the relief would be consistent with staff responses to requests that have been presented under similar facts and circumstances. In some cases, the requested relief might be granted upon the condition that those who seek the benefits of that relief fulfill certain notice and other reporting obligations that serve as substituted compliance for regulatory requirements that would otherwise be imposed. In other cases, the conditions might include reporting or recordkeeping requirements that are necessary to ensure that the relief granted by Commission staff is appropriate. Once again, it is likely that those who would comply with these conditions will have determined that the burden of complying with the conditions is outweighed by the relief that they seek to receive. The information collection associated with section 140.98(b) of the Commission's regulations is necessary to provide a mechanism whereby persons requesting no-action, interpretative and exemption letters may seek temporary confidential treatment of their request and the Commission staff response thereto and the grounds upon which such confidential treatment is sought.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
  - The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and
  - Ways to enhance the quality, usefulness, and clarity of the information to be collected;
- and

- Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.<sup>3</sup> The Commission reserves the right, but shall have no obligation to, review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Requirement will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**Burden Statement:** In order to establish estimates of the annual information collection burdens associated with the exemptive, no-action and interpretative letters that may be issued by Commission staff during the three year renewal period, Commission staff reviewed the letters of this type that were issued by Commission staff during 2016. This timeframe was chosen because it is believed that such recent experience is indicative of both the quantity of requests that Commission staff expects to receive and the quantity of letters that Commission staff expects to issue on an annual basis during the renewal period and the information collection burdens that may be associated with them. In some cases, the relief granted in 2016 is unlikely to be

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<sup>3</sup> 17 CFR 145.9.

requested again as it has been superseded by a Commission rulemaking. The projected burden estimates for the renewal period were not reduced accordingly in order to account for the possibility that new issues may arise. It is also possible that certain relief granted in 2016 may be superseded by a future Commission rulemaking. As future rulemakings and their effective dates are speculative, the estimates for the renewal period have not been reduced to account for potential rulemakings.

The annual respondent burden for this collection during the renewal period is estimated to be as follows:

Estimated Number of Respondents: 284.

Estimated Average Annual Burden Hours Per Respondent: 9.5.

Estimated Total Annual Burden Hours: 2,704.

Frequency of Collection: Occasional.

Type of Respondents: Respondents include persons registered with the Commission (such as commodity pool operators, commodity trading advisors, derivatives clearing organizations, designated contract markets, futures commission merchants, introducing brokers, swap dealers, and swap execution facilities), persons seeking an exemption from registration, persons whose registration with the Commission is pending, trade associations and their members, eligible contract participants, and other persons seeking relief from discrete regulatory requirements.

There are no capital costs or operating and maintenance costs associated with this collection.

These estimates, as set forth in greater detail below, include the burden hours for complying with the information requirements for exemptive, no-action and interpretative letters

contained in section 140.99(c) of the Commission’s regulations; effecting the filing of such letters pursuant to section 140.99(d); providing notice to Commission staff of materially changed facts and circumstances pursuant to section 140.99(c)(3)(ii); complying with any conditions that may be contained in a grant of no-action or exemptive relief; complying with requirements to make disclosures to third parties; and preparing and submitting withdrawals of requests for exemptive, no-action and interpretative letters, as provided in section 140.99(f). The estimates also include burden hours related to a request for confidential treatment made pursuant to section 140.98(b) of the Commission’s regulations.<sup>4</sup>

The burden hours associated with requests for exemptive, no-action and interpretative letters include both the drafting and filing of the request itself as well as performing the underlying factual or legal analysis generally to comply with the information collection. The burden hours associated with individual requests will vary widely, depending upon the type and complexity of relief requested, whether the request presents novel or complex issues, the relevant facts and circumstances, and the number of requestors or other affected entities. The Commission provides estimates of the amount of time that any requestor spends on any particular request as each request is unique, based upon the preceding factors.

	<u>ESTIMATED ANNUAL RESPONDENTS</u>	<u>ESTIMATED ANNUAL REPORTS OR RECORDS PER RESPONDENT</u>	<u>TOTAL ANNUAL RESPONSES</u>	<u>ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE</u>	<u>ESTIMATED ANNUAL BURDEN HOURS</u>
<u>REPORTING</u>					
§ 140.99 (c) - information requirements for letters	78	1	78	24.7	1,930
§ 140.99(d) - filing requirements	78	1	78	1	78
§ 140.99 (c)(3)(ii) – materially changed facts	5	1	5	3	15

<sup>4</sup> The Commission now includes the collection of information related to Commission regulation 41.3 (b), which involves exemption requests from certain intermediaries, under OMB number 3038-0059 and, as such, is no longer including it in this OMB number.

and circumstances					
§ 140.99(e) – staff response (conditions imposed)	16	1	16	5	80
§ 140.99(f) - withdrawal of requests	5	1	5	1	5
§ 140.98(b) – requests for confidential treatment	42	1	42	1	42
<u>TOTAL REPORTING</u>	224	1	224	9.6	2,150
<u>RECORDKEEPING</u>					
§ 140.99(e) - staff response (conditions imposed)	54	4	216	1	216
<u>DISCLOSURES TO THIRD PARTIES</u>	6	56.4	338	1	338
<u>TOTAL</u>	284	2.7	778	3.5	2,704

(Authority 44 U.S.C. 3501 et seq.)

Dated: March 24, 2017

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2017-06182 Filed: 3/28/2017 8:45 am; Publication Date: 3/29/2017]